

ROUTING AND TRANSMITTAL SLIP

Date

11/023/024

11/9/92

TO: (Name, office symbol, room number, building, Agency/Post)

Initials

Date

1. Holland Shephard, UDOGM

2.

3.

4.

5.

RECEIVED

NOV 12 1992

DIVISION OF

Action

DOIL GAS & MINING

Note and Return

Approval

For Clearance

Per Conversation

☒ As Requested

For Correction

Prepare Reply

Circulate

For Your Information

See Me

Comment

Investigate

Signature

Coordination

Justify

REMARKS

I hope this letter clears up some of your questions about Ash Grove's August 3 letter.

Let me know if you have any other concerns.

When this "enlargement" is finalized I'll send you ^(DOGM) a copy of the EA.

DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions

FROM: (Name, org. symbol, Agency/Post)

Room No.—Bldg.

Christina Reid - HRRR

Phone No.

743-6811

5041-102

GPO : 1987 O - 196-409

OPTIONAL FORM 41 (Rev. 7-76)
Prescribed by GSA
FPMR (41 CFR) 101-11.206

M/025/024

3600
(U-054)

August 20, 1992

Duane Crutchfield, Plant Manager
Ash Grove Cement Company
P.O. Box 51
Nephi, Utah 84648

Dear Mr. Crutchfield:

Thank you for your recent letter requesting clarification of some issues related to mining a shale deposit that have been discussed both in person and through recent correspondence. In your letter, you raised several questions about approval of a mineral material sale contract under the Materials Act of 1947 and Federal regulations 43 CFR 3600. I will address each of your concerns as follows:

1. "review a draft of the contract itself"

Enclosed is a copy of Form 3600-5, Contract for the sale of units of materials, appraised at \$2,000 or more. Standard stipulations are part of the form and additional stipulations would be attached based on your mining and reclamation plans, the analysis of your proposed operations in conformance with the National Environmental Protection Act and the House Range Resource Area Resource Management Plan in an environmental assessment, and as required to ensure compliance with Federal regulations.

a. "access to the site across public land from existing roads"

Access to a mineral material site can be authorized under a mineral material sale contract in most cases. Where a new road may be constructed, then a right-of-way will create a prior right of record to protect improvements in the event the land itself becomes subject to an entry or disposal.

b. "specify a .15 cents per ton purchase price"

The contract will not be authorized at less than fair market value as determined by an appraisal. Your letter requests a purchase price of ".15" cents per ton. An appraisal has not been conducted on the subject material, thus, a price cannot be guaranteed at this time.

Mineral materials can be disposed by two types of sales. If the material to be disposed does not exceed 100,000 cubic yards or weight equivalent, the material may be sold through a noncompetitive sale. The maximum term is five years for such a contract. If the material exceeds 100,000 cubic yards or weight equivalent or if competitive interest exists in the deposit, then the stone must be sold through a competitive sale. Competitive sales are awarded for a maximum of ten years. In either case, the minimum price is fair market value. Thus, the price quoted in your letter cannot be guaranteed at this time. Under the contract, a stipulation will be added to require an appraisal for fair market value at least every two years, for readjusting the price if necessary.

c. "defer pit reclamation until operations are fully completed"

Since contracts for a mineral material sale can only be issued for a maximum of five or ten years, which is less than your proposed mine life, the contract will have to require reclamation when the contract expires. The site will be bonded to ensure acceptable performance and compliance with the terms of the contract, including reclamation. When the contract expires, you can elect to apply for a new contract to continue mining. Reclamation could be postponed until the end of a subsequent contract, provided that reclamation of all disturbances are covered under the new contract and bond. The BLM cannot issue a contract without a bond and without requiring reclamation at the expiration of the contract.

Performance bonds are required for sales greater than \$2,000. Based on the proposed volume, the bond, including reclamation costs, will not be less than 20% of the total contract value. If a bond is held by the State of Utah and meets or exceeds the bond required by the BLM, then this

bond may be acceptable provided BLM has independent signing authority for redemption.

d. "contract will not contain onerous 'special stipulations'"

Stipulating operators under a sale contract does not involve a process different from operations conducted under the mining laws. In either case, a mining plan, including reclamation of the site and reasonable measures to protect the environment, is required. To conform with NEPA, the BLM must prepare an environmental assessment to evaluate the proposal, to determine whether significant impacts will occur requiring an environmental impact statement and to mitigate any impacts not addressed in the mining and reclamation plans. Stipulations will be based on this analysis and as necessary to ensure compliance with appropriate regulations.

Since the material is purchased from the federal government under a sale, production verification will be required by the permittee and BLM inspectors. Depending on the volume of disposal per year, an appropriate method of survey and record of material disposed will be required by the Authorized Officer under the contract.

2. "Necessity of obtaining approval of separate Mine Plan of Operations"

Before a sale contract will be approved, mining and reclamation plans will be required. A mining plan of operations, including proposed reclamation, under 43 CFR 3809 will not be necessary. However, the information required for either is basically similar.

"BLM's reclamation plans...will supersede State requirements"

BLM will coordinate approval with the Division of Oil, Gas, and Mining. However, approval will still be necessary from DOGM as required under laws for the State of Utah.

At this time, the BLM believes that the alumina material required for cement manufacturing is available from a variety of common materials. Accessibility to a particular deposit does not impart a unique property to the stone, rather the property must be inherent in the stone.

If you decide to operate under the surface management regulations (3809) for mining law rather than a sale contract under the Material Act of 1947, you are requested to explain your rationale for the locatability of this shale deposit. As discussed in previous meetings and through correspondence, to be an uncommon variety under the McClarty decision, the stone in comparison to other common varieties must have a unique property and possess special and distinct value.

Since you met with my staff in July, the BLM's policy for processing plans of operations (under 43 CFR 3809) for suspected common variety minerals has changed. Under the new policy, BLM will not approve a 3809 plan of operation for a suspected common variety mineral pending a determination on whether the subject mineral is locatable or salable. If Ash Grove Cement Company insists on the locatability of the subject mineral, BLM will follow the following procedure:

1. A BLM Mineral Examiner will examine the mining claims and prepare a mineral report to determine whether the mineral is a common variety (salable) or uncommon variety (locatable). If the subject deposit is found to be a common variety, then a validity examination will be conducted and a contest complaint will be issued.
2. Pending the outcome of the contest, BLM would allow the following actions:
 - a. Performance of any operations, including assessment work, that are necessary for timely compliance with Federal and State laws.
 - b. Continue to process the plan of operations, with conditional approval if appropriate, provided the operator establishes an escrow account for the appraised value of the subject mineral removed. Ash Grove Cement must make regular payments to the escrow account similar to the requirements under 43 CFR 3610. Failure to make payments will result in suspension of the conditional approval.

The monies in the escrow account will be disbursed to the Ash Grove Cement Company or the U.S. Treasury based on the final determination on whether the mineral is locatable or salable.

You state in your letter that 3,500 tons will be removed to complete testing of the subject material. As discussed in our meeting, you may remove this quantity for testing under your Notice as permitted under 43 CFR 3602.2 for sampling and testing. Removal of additional material in excess of 3,500 tons is not authorized at this time.

We appreciate your concerns about obtaining a mineral material contract and the locatability of the subject deposit. We appreciate your willingness to discuss your concerns with us, and we will continue to work with you. We also do not desire a adversarial situation. We hope to keep our communication open and seek a mutual, professional resolution to this issue.

If you have additional questions, please contact Christina Reid in my office (or Michael Jackson in the Richfield District).

Sincerely,

A handwritten signature in cursive script, appearing to read "Rex Rowley".

Rex Rowley
Area Manager

Enclosure: Contract Form 3600-5

cc: District Manager, Richfield

MJackson:mfr